



Briefing: How the Leaked EU Kids Act could impact video games and the Stop Killing Games campaign.

Author - James Baker (james@gamersvoice.org / or on signal messenger +447817605162)

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<https://drive.proton.me/urls/7FGQYQ01Y0#tWUq468D53Nj>

Summary

Before even beginning to address the specific harms this draft legislation will cause, the Commission must address the point 1 below and apparent lack of economic assessment for the impact on small providers. This demonstrates the policy it attempts to implement are in conflict with ECHR and democratic due process

The draft EU Kids Act would bring video games into a new EU-wide child-safety regime covering safety-by-design, parental controls, age assurance and age ratings.

A significant number of people who play games agree that there are legitimate policy objectives around ensuring children, and teenagers are able to enjoy games safely. Likewise there are often concerns expressed by the gaming community around manipulative design, in-game currencies and monetisation methods seen as exploitative.

However In bringing games into this regulatory regime it places some incredibly burdensome, and sometimes frankly impossible compliance duties on small publishers, modding communities, and preservation projects. It places most games behind an age-gate to access. It hurts competition and favours large corporations over smaller companies and providers.

As demonstrated in this document the Act creates a number of barriers to anyone wanting to preserve games by imposing new design and age-gating duties on any game distributed online. The Act harms Stop Killing Games objectives of ensuring games remain playable.

1. Lack of an economic assessment makes judgement of human rights law proportionality impossible

The Commission acknowledges uncertainty about the economic impact on enterprises.

It states that digital ID checks (that it calls ‘age-assurance’) and parental-control requirements will create additional costs and that:

“It is not possible to conclusively determine the costs”¹

However Stop Killing Games knows from work with studios such as Alderon Games that the cost of deploying ID checks can be significant. Additionally when the UK assessed the economic impact of its safety laws on small businesses it estimated them at around £7,200–£8,100 at 2019 prices. So the claim it’s not possible to calculate costs to micro enterprises does not appear to hold up to scrutiny². Without this impact it is hard to see how the Commission can argue it has adequately come to a judgement around the proportionality of the measures.

The cost impact is particularly worrying for gaming, as large numbers of games are kept alive by the efforts of not-for-profit community groups and communities without meaningful income streams. An example of this might be the [OpenRA](#) project.

At a time where gamers face increasing hardware costs from the global RAM chip shortage, and the gaming industry faces widespread layoffs, any additional costs are also a concern.

There are serious questions about how the proportionality of the measure can properly be assessed. EU legislation must comply with the Charter of Fundamental Rights, and where a measure limits protected rights, Article 52(1) requires that limitation to be necessary, proportionate, and genuinely directed towards a recognised objective of general interest.

Without a meaningful assessment of the measure’s economic and practical impacts, it is difficult to see how the EU commission can properly establish that the interference goes no further than necessary, or that less intrusive alternatives could not achieve the same objective.

2. Wide scope of act places most games behind an age-gate

The Act applies widely to all sorts of games, not just multiplayer games where there might be a risk of someone experiencing abusive behaviour from another player.

Instead the act uses the distribution method chosen by the provider of a game to determine if it’s in scope of the regulations or not. In this sense it exceeds even the UK’s Online Safety Act that seeks to regulate games when defined as ‘user-to-user’ services.³

¹ Explanatory Memorandum, p.9 (EN 8)

² Online Safety Act Impact assesment

https://assets.publishing.service.gov.uk/media/6716222b9242e6cc6c849b09/Online_Safety_act_enactment_impact_assessment.pdf

³ Online Safety Act 2023, Section 226 <https://www.legislation.gov.uk/ukpga/2023/50/section/226>

The impact of this is that games that require no internet connection, no interaction of other players, and which have already been assessed as age-appropriate under the PEGI rating system can still find themselves covered by these additional regulations, placed behind an age-gate, and subject to child-safety design requirements.

The clearest example of this definition scope problem appears in Article 12. The draft says:

“some online games that do not allow the dissemination of information to an indeterminate number of recipients should also fall within the scope”⁴

It goes on to cover games irrespective of whether the software executes “locally [or] remotely” and whether the game is free, paid or contains in-app purchases. Only games available exclusively through physical media, “without any online component enabling their access, distribution, or purchase”, are excluded.

The way the Act defines games in-scope produces a peculiar situation: a game distributed via a second-hand 1990s SNES cartridge would be outside scope: but the same game sold via the Nintendo store would be in scope.

This would mean the same game sold via different methods may or may not require someone to pass through an age-gate check. It’s like applying one set of laws to a movie that you watch on a DVD and another that you stream on Netflix.

This exemption for physical games that do not connect online at the same time comes as Sony (a member of Video Games Europe) is discontinuing them entirely.

3. Safety by design requirements would render it illegal to distribute many historic titles

The Act places a number of complicated design and parental-control obligations onto games.

It seems impossible to see how these could be retrospectively applied to a large number of games that have already been published. Although these games would remain legal to play for someone already in possession of them it would essentially criminalize their distribution.

Example of some of these safety-by-design requirements are as follows:

Article 15 of the draft act requires providers of online games to ensure that:

“compulsive or excessive use of the game by minors is not encouraged”⁵

and to provide high levels of privacy and safety in settings and interactions.

The proposal also requires “mandatory access to the tools for guardians”, with access for children under 13 controlled through those tools.

⁴ Article 12, p.18 (EN 17)

⁵Article 15, pp.52–53 (EN 51–52).

Article 20 then requires online-game providers to implement:

“effective, accessible and user-friendly tools for guardians”⁶

that cannot easily be circumvented and that incorporate mechanisms including time-limited access and management of settings.

These requirements may be readily understandable for large social or multiplayer games such as Roblox, or a child account being set up on a gaming platform such as Steam, Microsoft Xbox, or PlayStation network.

Their application is much less obvious for a game containing no accounts, communications or online functionality beyond distribution. How for example is a judgement as to whether Tetris, Mario Kart or Candy Crush encourages excessive use by minors made?

There is also no clear general grandfathering exemption for older titles. As such the article 8, “General obligation on safety by design” requirements risk making continued digital distribution of legacy games commercially or technically unviable, particularly where source code is unavailable or the original development team no longer exists.

4. It will hurt small developers and benefit only large corporations

The proposal expressly rejects a general exemption for small businesses:

“small and micro enterprises are not exempted from this Regulation, since they may equally provide harms to minors.”⁷

This matters in gaming, where a provider could range from a multinational publisher to a one-person independent studio, or a small modding community. The only people who will benefit from this are large publishers who will be able to withdraw a game from sale without repercussion citing the Act, have their competition destroyed and will be able to absorb, or in some cases profit (Epic owns and operates [Kids Web Services \(KWS\) through its subsidiary Kids Web Services Ltd.](#)⁸) from the general requirements for everyone to impose ID age-gates. the cost of imposing age ID systems. It should be noted one publisher

There is also no exemption for video-game preservation, cultural archives, museums, fan preservation projects or legacy games. This demonstrates the EU simply does not care about gaming as a cultural pursuit worthy of preservation.

The commission has shown that exemptions are possible, but is saying it doesn’t care about game preservation, and only seeks to exempt certain public-interest services, including:

“not-for-profit educational and scientific repositories”

and:

⁶ Article 20, p.56 (EN 55)

⁷ Explanatory Memorandum, p.6 (EN 5).

⁸ <https://legal.epicgames.com/epicgames/privacy-policy>

“open-source software-developing-and-sharing platforms⁹”.

5. Even child safe games will face restrictions

Article 8 of the draft EU Kids Act applies the safety-by-design regime to online games whether or not the service requires an account.

It states that covered services must comply with the child-safety requirements by default and:

“shall only derogate from those requirements after they have established that the recipient ... is an adult”¹⁰

Even if a game is totally child-safe in its design for example ‘Animal Crossing: New Horizons’, which is rated PEGI 3 it will be within scope despite there being no meaningful age-restricted content to age-gate.

It should be noted that the age-gating requirements does not necessarily place a universal ID check on every game, as someone might have passed an ID check once on a storefront, or operating system level.

However it requires every game to still comply with the child-safe defaults, with additional guardian-control requirements for children under 13. ID checks such as an age-signal would be required where the provider wanted to treat a user as an adult and relax those protections

Although the Act seeks to introduce strong privacy requirements for these systems, and states they must not identify, locate, track, target or profile users:

“Any age assurance measure shall be zero knowledge proof.”¹¹

Many leading privacy experts argue that privacy friendly online ID checks are not possible. This case is made in academic work such as Bellovin’s [‘Privacy-preserving age verification - and its limitations.’](#)¹²

[Regardless of privacy concerns there remains an Article 10 ECHR free expression](#)¹³ proportionality question that arises from introducing age-gating infrastructure into low-risk or entirely single-player games.

⁹ Article 13, p.18 (EN 17)

¹⁰ Article 8, p.48 (EN 47).

¹¹ Article 28, p.61 (EN 60).

¹² Bellovin, S. M. (2025). *Privacy-preserving age verification—and its limitations*. Submission to the IAB/W3C Workshop on Age-Based Restrictions on Content Access. - <https://www.cs.columbia.edu/~smb/papers/age-verify.pdf>

¹³ ECHR Article 10 - <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-10>

6. App stores and game stores would become age-gating infrastructure

The proposal separately requires software application stores to establish age-rating systems and prevent minors from accessing applications considered inappropriate for their age.

Article 16 states:

“Providers of software application stores shall not allow minors to access or purchase software applications that are inappropriate for their respective age”¹⁴

and requires stores to assess users' ages.

This shifts age ratings such as PEGI from principally providing advisory information to parents and players towards becoming access controls enforced by digital distribution platforms.

It's worth noting that the codes envisaged under Article 17 consider not only violent, sexual, gambling and self-harm content but also “in-app purchases, contact risks and addictive design features”.¹⁵ “Addictive design” is not a clinically established term, but is defined by the Act as certain design characteristics that encourage excessive or compulsory use. In practice it seems it could likely kill off things like Warthunder, or Clash of Clan daily log in rewards.

7. Extraterritorial scope - Games around the world would be under threat

The Act applies to covered services, including online games, “irrespective of where they have their place of establishment”¹⁶ where they offer services to people in the EU. Non-EU providers must also appoint an EU legal representative under Article 24. This sets the EU policy on a clear collusion course, and raises the prospect of US based gaming services having to either comply with the Act or geo-block EU citizens.

It should be noted that duties of this act stack upon duties of the UK's Online Safety Act, and other developing online safety laws around the world. This creates a very alarming compliance multiplier effect.

The impact of this will be to entrench the structural big tech power of the largest game publishers whose consumer practices involve intentionally shutting down games, while inhibiting smaller community efforts to keep games alive.

8. Levy and supervisory fee provisions would push up the cost of gaming

The draft contains a supervisory fee, but it would not apply to an ordinary small game or indie developer simply because they are in scope of the Kids Act.

¹⁴ Article 16, p.53 (EN 52)

¹⁵ Article 17, p.54 (EN 53)

¹⁶ Article 2(2), p.40 (EN 39)

The relevant provision is Article 36, PDF pp.66–67 (EN 65–66). It says the Commission will charge an annual supervisory fee to providers of very large online platforms and to certain services, including video-gaming platforms, where the Commission itself has supervisory competence.

As such it would impact on gamers would be in-terms of increased costs and expense of playing video games. With publishers citing costs of preserving games as a reason not to do it, any additional costs being placed upon the industry and gamers would not be beneficial to the case that Stop Killing Games is making.

Conclusion - The EU Kids Act threatens gaming as a cultural practice and infringes people's freedom of expression rights.

The draft identifies genuine concerns in modern gaming, but its legal scope is much wider than those harms.

A multiplayer platform with open chat, manipulative monetisation and engagement-optimising mechanics presents fundamentally different risks from a downloadable single-player game or the preservation of a 30-year-old title.

The EU Kids Act should reflect that distinction but fails to do so. It fails to acknowledge industry or developer best practice at engineering games or online environments to reduce harms. It fails to exempt small indie project, or small not-for-profit software distributors or game preservation projects. Instead treating them the same as large mult-national publishers and platforms. It essentially criminalises many attempts to preserve digital games.

To comply with the ECHR and fundamental rights such as Freedom of Expression rights child-safety regulation should follow demonstrable risk and functionality—not simply the fact that a video game happens to be distributed online.

By restricting how people can access, share and preserve games, the Act poses a threat to Stop Killing Games' objectives, and more widely video gaming as a cultural practice. This cuts against UNESCO principles that recognise the importance of cultural participation, diversity of expression and safeguarding digital heritage.

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